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No. 291

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, PETITIONER

v.

ELIZABETH C. JACOBS, EXECUTRIX OF THE LAST WILL AND TESTAMENT OF W. FRANCIS JACOBS, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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CITATIONS

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OPINIONS BELOW

The memorandum opinion of the District Court (R. 70–75) is unreported. The opinion of the Circuit Court of Appeals (R. 88–92), is reported in 97 F. (2d) 784.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 28, 1938 (R. 92). The petition for certiorari was filed September 28, 1938, and certiorari was granted on November 7, 1938.

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the Revenue Act of 1924, the value of property acquired by the decedent and his wife (who survived him) as joint tenants prior to the enactment of the Revenue Act of 1916 may be included in his gross estate to the extent that he furnished the purchase price therefor.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set out in the Appendix, *infra*, pp. 18–23.

STATEMENT

The facts were stipulated (R. 12–15) and were found as stipulated (R. 71–74). They may be summarized as follows:

On June 17, 1924, W. Francis Jacobs predeceased his wife Elizabeth C. Jacobs (R. 71). At the time of his death they owned as joint tenants two pieces of real estate in Chicago, Illinois. The first parcel, situated on Humboldt Boulevard, was acquired by them on July 29, 1909 (R. 73–74), and the second, situated on Monticello Avenue, was acquired by them on November 23, 1917, subject, however, to an encumbrance of $17,000 (R. 73).

With respect to the first parcel, the Commissioner determined that its value at the time of the

decedent's death was $19,000 and that the funds used in its purchase were entirely those of the decedent. Hence he included the entire value in the gross estate (R. 73–74).

With respect to the second parcel, he found that the decedent had contributed fifteen-sixteenths and his wife one-sixteenth of its price. He determined that its value at the time of decedent's death was $65,000 and included fifteen-sixteenths thereof, or $60,937.50, in the gross estate (R. 73).

As a result of such inclusions, he determined that there was a deficiency in the estate tax of $1,796.23, and that the undischarged part of this was $1,347.17, which with interest in the sum of $148.18 made a total of $1,495.35. The respondent, as executrix of the decedent's estate, paid the deficiency and duly filed a claim for refund, which was allowed to the extent of $7.48 and rejected as to the balance (R. 72). The respondent thereupon brought this suit to recover such balance [1] (R. 2–9).

The sole question presented to the District Court related to the Commissioner's inclusion of the value of the two parcels of property in the decedent's gross estate. That court concluded that the tax on the estate of the deceased joint tenant could properly be measured only by one-half of the property held by them as joint tenants; and, so far as the

[1] The claim for refund (R. 56) and the petition (R. 9) seek to recover, respectively, $1,800.00 and $1,903.70. It is not disclosed how these figures are arrived at.

Humboldt Boulevard property was concerned, that the Revenue Act of 1924 could not be given retroactive operation so as to tax more than one-half of the property to the decedent's estate (R. 75). The court concluded that the respondent was entitled to judgment in the principal sum of $502.55 plus $306.24 interest, or a total of $808.79[2] (R. 75). Judgment in that amount was accordingly entered (R. 75–76). The Government appealed (R. 77).

On appeal, the petitioner admitted that under the decision of this Court in *Foster* v. *Commissioner*, 303 U. S. 618, the question involved as to the joint tenancy created in 1917, in the Monticello Avenue property, had been erroneously decided by the District Court. The Circuit Court of Appeals in this respect reversed the judgment of the District Court. On the other hand, it affirmed the judgment of the District Court insofar as it applied to the Humboldt Boulevard property which was acquired in joint tenancy prior to the 1916 Act.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred in holding:

1. That the estate tax imposed by Section 302 (e) of the Revenue Act of 1924 may not be measured by the entire value of property acquired in joint tenancy by the decedent and his wife prior to the enactment of the Revenue Act of 1916, even

[2] The record does not disclose how the court arrived at the $502.55 figure.

though the decedent furnished the entire consideration for its acquisition.

2. That Section 302 (e) of the Revenue Act of 1924, as applied in the circumstances of this case, with respect to the Humboldt Boulevard property, is unconstitutional.

3. That the value of only one-half of that property was includible in his gross estate.

4. In affirming the judgment of the District Court insofar as it relates to that property.

SUMMARY OF ARGUMENT

The express language of the Revenue Act of 1924, Sections 302 (e) and 302 (h), requires the inclusion in the gross estate of the full value of the property, purchased entirely with funds of the decedent, held in joint tenancy, though the joint tenancy was created prior to the Revenue Act of 1916, which first provided for the inclusion in the gross estate of the full value of such joint tenancy. This application of the statute is not unconstitutional.

Tyler v. *United States,* 281 U. S. 497, upheld the inclusion in the gross estate of the full value of property held in tenancy by the entirety because of the ripening of the rights of the survivor in the whole estate upon the death of the other party to the tenancy. Similarly with respect to a joint tenancy, there also exists a right of survivorship, and the death of one party eliminates his right to take by

survivorship and ripens for the first time the rights of the survivor into ownership of the whole estate, making appropriate the imposition of an estate tax upon the full value of the joint tenancy. This Court so held in *Foster* v. *Commissioner,* 303 U. S. 618, relying on the *Tyler* case.

Nor is the statute unconstitutionally retroactive as applied to tenancies created prior to 1916. This Court has so held with respect to tenancies by the entirety. *Helvering* v. *Bowers,* 303 U. S. 618, relying solely on the *Tyler* case. And since the *Tyler* case applies as well to joint tenancies (*Foster* v. *Commissioner, supra*), the statute constitutionally embraces joint tenancies created prior to 1916. The cessation of the decedent's right to survivorship and the ripening of the survivor's ownership upon the death of the decedent which warrants the inclusion in the gross estate of the full value of joint tenancies created after 1916 (*Foster* v. *Commissioner, supra*) warrants the inclusion of the full value of joint tenancies created prior to 1916. *Dimock* v. *Corwin* (C. C. A. 2d), decided November 7, 1938.

The court below erroneously relied upon *Knox* v. *McElligott,* 258 U. S. 546, and *Cahn* v. *United States,* 297 U. S. 691, which arose respectively under the 1916 and 1918 Acts, which contained no retroactive provisions.

The court below also stated that unlike a party to a tenancy by the entirety (which it said did not exist in Illinois) the title of each joint tenant is to a share of the estate only. If this is an implication that joint estates under the Illinois law differ from joint estates at common law it is wholly unjustified. The Illinois decisions make it abundantly clear that these have all the attributes of common law joint tenancies. Hence the decision of the lower court necessarily rests entirely upon a misconception of the basis of the tax, which is the cessation as the result of the death of one of the joint tenants of his right to take the whole by survivorship and the accession on the part of the surviving tenant of the title to the whole.

ARGUMENT

The applicable statute is the Revenue Act of 1924, Section 302 (e) of which, so far as material here, requires the inclusion in the gross estate of the decedent of the value at the time of the decedent's death of all property to the extent of the interest therein held as joint tenants by the decedent and any other person, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth. So far as material here, subdivision (h) provides that sub-

division (e) shall apply to estates, interests and rights made, created, arising, or existing before or after the enactment of the 1924 Act.

The property here in question was purchased entirely with funds of the decedent. (R. 74.) In affirming the District Court's judgment in respect of that property, the court below decided (R. 91) that where the joint interest of the decedent and wife in Illinois real estate was created *prior* to the passage of the Revenue Act of 1916, only one-half of the value thereof could validly be included in the gross estate, notwithstanding that the jointly owned property was purchased by the decedent entirely with his own funds, because, in respect of joint tenancies, Congress did not have the power to give the Act retroactive operation.

The decision below is contrary to the principles settled by the decisions of this Court. In *Tyler* v. *United States,* 281 U. S. 497, the Court permitted the taxation of the full value of a tenancy by the entirety (created after 1916), where the decedent had furnished the money for the purchase of the property held by himself and the surviving spouse. The Court posed, as the decisive question (p. 503):

> * * * whether the death has brought into being or ripened for the survivor, property rights of such character as to make appropriate the imposition of a tax upon that result * * * to be measured, in whole or in part, by the value of such rights.

The Court concluded (p. 504) that the death of one of the parties to the tenancy "became the 'generating source' of important and definite accessions to the property rights of the other" and that it was not arbitrary to include in the gross estate the value of property which came to the tenancy as a pure gift from the deceased spouse, and which, as a consequence of his death, became the property solely of the survivor.

The decision of this Court in *Foster* v. *Commissioner*, 303 U. S. 618, permitting the taxation of the *full* value of a *joint tenancy*,[3] on the authority of both the *Tyler* case and *Gwinn* v. *Commissioner*, 287 U. S. 224, shows that there is no distinction so far as taxability is concerned between estates held by the entirety and those held in joint tenancy.[4] In either case the death of one party terminates his right of survivorship and ripens property rights

[3] It is to be noted that the order of the Court granting certiorari in the *Foster* case, as disclosed by the Court's Journal of November 15, 1937, states that the review was "limited to the question whether the total value of the property held by the decedent and petitioner as joint tenants, as decided by the Circuit Court of Appeals, or only one-half thereof, should be included in the gross estate of the decedent for the purpose of the federal estate tax."

[4] See to the same effect the decisions in *Commissioner* v. *Emery*, 62 F. (2d) 591 (C. C. A. 7th); *Dimock* v. *Corwin*, 19 F. Supp. 56 (E. D. N. Y.), affirmed by the Circuit Court of Appeals for the Second Circuit on November 7, 1938, not yet reported, but see 1938 Prentice-Hall-Federal Tax Service, vol. 1, par. 5.673; *O'Shaughnessy* v. *Commissioner*, 60 F. (2d) 235 (C. C. A. 6th), certiorari denied, 288 U. S. 605

so as to constitute the survivor the sole proprietor, and thus makes appropriate the imposition of an estate tax and the inclusion of the full value of the property of the tenancy. The differences between the tenancies, primarily the power of the joint tenant alone to sever the tenancy, were thus held immaterial in view of the decisive similarity—the incident of the right of survivorship. As the Government pointed out in its brief in the *Foster* case (Br. p. 9), upon the death of the decedent and because of it, the survivor of the joint tenancy, for the first time, became entitled to the exclusive possession, use and enjoyment of the whole property, as her own; then, and then only, did the survivor become assured of the power of disposing of the property by will. The decedent's death was the event which made the shifting of the full benefits of the ownership to his wife complete and effective, and relieved her of the possibility of losing the whole property by the survival of the decedent. See *Dimock* v. *Corwin,* 1938 Prentice-Hall Federal Tax Service, vol. 1, par. 5.673, at p. 5.1468, decided November 7, 1938 (C. C. A. 2d), now pending on certiorari, No. 482; *O'Shaughnessy* v. *Commissioner,* 60 F. (2d) 235, 237 (C. C. A. 6th), certiorari denied, 288 U. S. 605.

The court below distinguished the *Tyler* and *Foster* cases on the ground that in the instant case the joint tenancy was created in 1909, prior to the 1916 statute first providing for the inclusion of the

full value of such joint tenancy, and held that therefore only one-half of the property held in the tenancy could be included in the gross estate. But its decision in *Bowers* v. *Commissioner,* 90 F. (2d) 790 (C. C. A. 7th), taking exactly the same position with reference to estates by the entirety, was reversed *per curiam* in *Helvering* v. *Bowers,* 303 U. S. 618, which decided that the *full* value of estates held by the entirety created prior to 1916 is includible in the gross estate. In this connection it is to be observed that the *Bowers* decision was predicated solely on the authority of the *Tyler* case, which involved tenancies created *after* 1916, and thus made the *Tyler* case stand for the proposition that the full value of estates by the entirety is taxable no matter when the estate was created.[5] And, since under *Foster* v. *Commissioner, supra,* the *Tyler* case is applicable to joint tenancies as well as tenancies by the entirety, it would seem plain that Congress may constitutionally tax the full value of joint tenancies, no matter when created.

The manifest basis of the *Bowers* decision is that the statute taxing the full estate was not unconsti-

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[5] To the same effect see *Third National Bank & T. Co.* v. *White,* 287 U. S. 577, and compare *Phillips* v. *Dime Trust & S. D. Co.,* 284 U. S. 160. Also see *Levy's Estate* v. *Commissioner,* 65 F. (2d) 412 (C. C. A. 2d); *Robinson* v. *Commissioner,* 63 F. (2d) 652 (C. C. A. 6th), certiorari denied, 289 U. S. 758; *Putnam* v. *Burnet,* 63 F. (2d) 456 (App. D. C.); *Bushman* v. *United States,* 8 F. Supp. 694 (C. Cls.), certiorari denied, 295 U. S. 756.

tutionally retroactive because the interest of the decedent pervaded the whole property and his entire interest ceased only at his death, which also perfected the interest of the survivor in the whole estate. In the case of a joint tenancy it also is true that the interest of the decedent pervades the whole property and ceases only at his death, which perfects the interest of the survivor in the whole estate. This is the premise which necessarily underlay the decision in *Foster* v. *Commissioner, supra,* permitting the taxation of the entire joint tenancy. It is, therefore, likewise true that it is not unconstitutional to impose a tax upon the full value of the joint tenancy when the decedent's interest and right of survivorship terminates and the survivor's interest in the whole estate ripens into sole ownership, i. e. upon the death of a tenant, even though the joint tenancy was created prior to 1916. As the Circuit Court of Appeals for the Second Circuit recently said in *Dimock* v. *Corwin, supra:*

> If an event occurs at death which justifies a tax upon the whole value of the joint estate created after the statute, the same event will justify a tax upon the whole value of a joint estate created before the statute. * * * Congress has such power to legislate and require the inclusion of the whole value because the death of a joint tenant results in such a shifting of economic benefits in the entire property as to make appropriate a tax on that result measured by the value of the entire property. Therefore it is not ma-

terial that the joint tenancy was created prior to the first federal estate tax of 1916.

2. The court below seems to have departed from the plain implications of these decisions in part because of certain decisions of this Court, notably *Knox* v. *McElligott,* 258 U. S. 546, and *Cahn* v. *United States,* 297 U. S. 691. The *Knox* case arose under the 1916 Act and the *Cahn* case under the 1918 Act. Neither contains retroactive provisions. In the *Knox* case this Court held that the 1916 Act could not be given retroactive application on the authority of *Shwab* v. *Doyle,* 258 U. S. 529, which in turn held that the contemplation of death section of the statute could not be given retroactive application in the absence of an express provision of the statute showing it to be the intention of Congress to do so. The *Cahn* case was decided *per curiam* on the authority of the *Knox* case. Accordingly, neither decision is applicable to the Revenue Act of 1924.[6] (See Section 302 (h), *infra,* p. 19.) The other decisions cited by the court below likewise turn on questions of construction,[7] or invalidate the

[6] *Griswold* v. *Helvering,* 290 U. S. 56, not relied on by the court below, involved the Revenue Act of 1921, which similarly contained no provision comparable to Section 302(h) of the 1924 Act. The Commissioner, in deference to the ruling in the *Knox* case, sought only to include one-half of the value of a joint tenancy created before the 1916 Act and was sustained by this Court.

[7] *Lewellyn* v. *Frick,* 268 U. S. 238; *Helvering* v. *Helmholz,* 296 U. S. 93; *Industrial Trust Co.* v. *United States,* 296 U. S. 220; *Hassett* v. *Welch,* 303 U. S. 303.

application of the statute to a transfer completed prior to enactment, so as to leave nothing to pass at death,[8] a ruling inapplicable here where respondent's rights in the whole estate did not ripen until the death of the decedent.

3. A last point remains, largely because of the ambiguity of the reference below to Illinois decisions in suggesting a distinction between tenancies by the entirety and joint tenancies. The court stated (R. 90) that a joint tenant under the Illinois statutes has the right to sell his interest (citing *Lawler* v. *Byrne,* 252 Ill. 194; *Szymczak* v. *Szymczak,* 306 Ill. 541); to subject it to a lien (citing *Hardin* v. *Wolf,* 318 Ill. 48; *Liese* v. *Hentze,* 326 Ill. 633), and to sue for partition (citing *Barr* v. *Barr,* 273 Ill. 621). It concluded that, whereas under estates by the entirety (which it said did not exist in Illinois) the title of each grantee is to the whole, not destructible by an act of the other, "On the other hand the title of each joint tenant is to a share of the estate only" (R. 90), citing its decision in *United States* v. *Robertson,* 183 Fed. 711, certiorari denied, 220 U. S. 616.

If by the foregoing the court below intended to imply that Illinois joint tenancies in real estate differ from such joint tenancies at common law or in other States, we submit such implication is wholly unjustified. It is not questioned that the Illinois statute, which was approved June 30, 1919, L. 1919,

[8] *Nichols* v *Coolidge*, 274 U. S. 531; see *Helvering* v. *Helmholz*, 296 U. S. at 97–98.

p. 633 (Appendix, *infra*, p. 22), specifically provides for the creation of joint tenancies in real estate. It is well settled in Illinois that a joint tenancy under the Illinois statutes has all of the common-law attributes of such tenancies.* The last expression of the Supreme Court of Illinois on the subject is its decision in the case of *Deslauriers* v. *Senesac*, 331 Ill. 437, where the court said (p. 440):

> An estate in joint tenancy can only be created by grant or purchase—that is, by the act of the parties. It cannot arise by descent or act of law. The properties of a joint estate are derived from its unity, which is fourfold, the unity of interest, the unity of title, the unity of time, and the unity of possession; or, in other words, joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. 1 Sharswood's Blackstone's Com. book 2, p. 180; Freeman on Co-tenancy and Partition, (2d ed.) sec. 11; 1 Washburn on Real Prop. (6th ed.) sec. 855; 7 R. C. L. p. 811; *Gaunt* v. *Stevens*, 241 Ill. 542.

See also *Gaunt* v. *Stevens*, 241 Ill. 542, 547, cited by the Illinois court, and *Partridge* v. *Berliner*, 325 Ill. 253.

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* The Married Woman's Act has abolished the common-law rule that a deed to a husband and wife creates in them a tenancy by the entirety, but a joint tenancy between them is governed by the rules applicable to all other joint tenancies. *Lawler* v. *Byrne*, *supra*.

It will be noted that the present Illinois statute is but a reenactment of the Act of June 26, 1917 (see Appendix, *infra*, p. 23). A full exposition of the history of the 1917 Act and its meaning is found in *Svenson* v. *Hanson*, 289 Ill. 242, which expressly follows *Mette et al.* v. *Feltgen*, 148 Ill. 357, 367, decided under the prior law. In the last mentioned case, the court held that, upon the death of the wife, no estate in the property held in joint tenancy by her and her husband passed to her heirs by inheritance but to the husband as surviving joint tenant by survivorship. The basis of the decision is that the Illinois statute permits "parties to create the common law estate of joint tenancy, with its common law incidents, by expressly declaring in a deed running to two or more grantees, that the estate conveyed shall pass, not in tenancy in common, but in joint tenancy." Cf. *Lawler* v. *Byrne*, *supra*, p. 197, and *Liese* v. *Henize*, *supra*, p. 637.

There appears, therefore, to be no basis for making a distinction between a joint tenancy under the California law, for example, considered in the *Foster* case, *supra*, and a joint tenancy under the Illinois law. The tax incidents are the same in both cases. Hence the decision of the lower court rests entirely upon a misconception of the basis of the tax, which is the cessation at and as a result of the death of one joint tenant of his right to take the whole by survivorship and the accession on the par of the surviving tenant of title to the whole

for the first time. As stated above, the principles already settled by decisions of this Court justify the inclusion in the gross estate of the full value of the estate held in joint tenancy.

CONCLUSION

It is therefore respectfully submitted that the decision of the court below should be reversed in so far as it holds that only one-half of the value of the Humboldt Boulevard property and not the whole thereof is includible in the decedent's gross estate.

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DECEMBER 1938.

APPENDIX

Revenue Act of 1924, c. 234, 43 Stat. 253:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth: *Provided,* That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than a fair consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further,* That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person

as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

* * * * *

(h) Subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

Treasury Regulations 68, promulgated under the Revenue Act of 1924:

ART. 22. *Property held jointly or as tenants by the entirety.*—The foregoing provisions of the statute extend to joint ownerships, wherein the right of survivorship exists, and specifically reaches property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed towards the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. The statute applies to all classes of property, whether real or personal, where the survivor takes the entire interest therein by right of survivorship, and no interest therein forms a part of the decedent's estate for purposes of administration. It does not include property held by the decedent and any other person or persons as tenants in common.

ART. 23. *Taxable portion.*—The entire value of such property is prima facie a part of the decedent's gross estate, but as it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner where neither had parted with any consideration in its acquirement, facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the value of the entire property, or only a part, or none of it, enters into the make-up of the gross estate, depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth, forms no part of the decedent's gross estate. (2) Where the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the value of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) Where the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by the other joint owner from the decedent as a gift, or for less than a fair consideration in money or money's worth, then such portion of the value of the entire property, proportionate to the con-

sideration, if any, which in the first instance was paid from such other joint owner's own funds, forms no part of the gross estate. (4) Where the property was acquired by the decedent and his or her surviving spouse as tenants in the entirety by gift, will, or inheritance, then but one-half of the value of the property becomes a part of the gross estate. (5) Where acquired by the decedent and the other joint owner as joint tenants by gift, will, or inheritance, and their interests are not otherwise specified, or fixed by law, then one-half only of the value of the property is a part of the gross estate; or, where so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall each be deemed the owner of an equal fractional part, and the value of one only of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (a) Where the decedent furnished the entire purchase price, the entire property should be included in the gross estate; (b) where the decedent furnished a part only of the purchase price, only a corresponding portion of the property should be so included; (c) where the decedent, prior to the acquisition of the property by himself and the other joint owner, gave the latter a sum of money which later constituted such other joint owner's entire contribution to the purchase price of the property, the entire value of the property should be included; (d) where the other joint owner, prior to the acquirement of the property, received from the decedent, for less than a fair considera-

tion in money or money's worth, property which thereafter became, as such, or in a converted form, part of the purchase price of the property, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (e) where the decedent furnished no part of the purchase price, no part of the property should be included; (f) where the decedent and spouse acquired the property by will as tenants by the entirety, one-half of the value of the property should be included.

Smith-Hurd Revised Statutes, Illinois, 1935, c. 76:

AN ACT to revise the law in relation to joint rights and obligations. [Approved June 30, 1919. L. 1919, p. 633.]

1. JOINT TENANCY DEFINED.—§ 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no estate in joint tenancy in any lands, tenements or hereditaments shall be held or claimed under any grant, devise or conveyance whatsoever heretofore or hereafter made, other than to executors and trustees unless the premises therein mentioned shall expressly be thereby declared to pass not in tenancy in common but in joint tenancy; and every such estate other than to executors and trustees (unless otherwise expressly declared as aforesaid), shall be deemed to be in tenancy in common and that all conveyances heretofore made, or which hereafter may be made, wherein the premises therein mentioned were or shall be expressly declared to pass not in tenancy in common but in joint tenancy, are hereby

declared to have created an estate in joint tenancy with the accompanying right of survivorship the same as it existed prior to the passage of an Act entitled: "An Act to amend section 1 of an Act entitled: 'An Act to revise the law in relation to joint rights and obligations,' approved February 25, 1874, in force July 1, 1874," approved June 26, 1917, in force July 1, 1917.

U. S. GOVERNMENT PRINTING OFFICE : 1919